

**Effective 5/10/2016**

**31A-17-404 Credit allowed a domestic ceding insurer against reserves for reinsurance.**

- (1) A domestic ceding insurer is allowed credit for reinsurance as either an asset or a reduction from liability for reinsurance ceded only if the reinsurer meets the requirements of Subsection (3), (4), (5), (6), (7), or (8), subject to the following:
  - (a) Credit is allowed under Subsection (3), (4), or (5) only with respect to a cession of a kind or class of business that the assuming insurer is licensed or otherwise permitted to write or assume:
    - (i) in its state of domicile; or
    - (ii) in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance.
  - (b) Credit is allowed under Subsection (5) or (6) only if the applicable requirements of Subsection (9) are met.
- (2) A domestic ceding insurer is allowed credit for reinsurance ceded:
  - (a) only if the reinsurance is payable in a manner consistent with Section 31A-22-1201;
  - (b) only to the extent that the accounting:
    - (i) is consistent with the terms of the reinsurance contract; and
    - (ii) clearly reflects:
      - (A) the amount and nature of risk transferred; and
      - (B) liability, including contingent liability, of the ceding insurer;
  - (c) only to the extent the reinsurance contract shifts insurance policy risk from the ceding insurer to the assuming reinsurer in fact and not merely in form; and
  - (d) only if the reinsurance contract contains a provision placing on the reinsurer the credit risk of all dealings with intermediaries regarding the reinsurance contract.
- (3) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.
- (4)
  - (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that is accredited by the commissioner as a reinsurer in this state.
  - (b) An insurer is accredited as a reinsurer if the insurer:
    - (i) files with the commissioner evidence of the insurer's submission to this state's jurisdiction;
    - (ii) submits to the commissioner's authority to examine the insurer's books and records;
    - (iii)
      - (A) is licensed to transact insurance or reinsurance in at least one state; or
      - (B) in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
    - (iv) files annually with the commissioner a copy of the insurer's:
      - (A) annual statement filed with the insurance department of its state of domicile; and
      - (B) most recent audited financial statement; and
    - (v)
      - (A)
        - (I) has not had its accreditation denied by the commissioner within 90 days of the day on which the insurer submits the information required by this Subsection (4); and
        - (II) maintains a surplus with regard to policyholders in an amount not less than \$20,000,000;or
      - (B)
        - (I) has its accreditation approved by the commissioner; and
        - (II) maintains a surplus with regard to policyholders in an amount less than \$20,000,000.

- (c) Credit may not be allowed a domestic ceding insurer if the assuming insurer's accreditation is revoked by the commissioner after a notice and hearing.
- (5)
  - (a) A domestic ceding insurer is allowed a credit if:
    - (i) the reinsurance is ceded to an assuming insurer that is:
      - (A) domiciled in a state meeting the requirements of Subsection (5)(a)(ii); or
      - (B) in the case of a United States branch of an alien assuming insurer, is entered through a state meeting the requirements of Subsection (5)(a)(ii);
    - (ii) the state described in Subsection (5)(a)(i) employs standards regarding credit for reinsurance substantially similar to those applicable under this section; and
    - (iii) the assuming insurer or United States branch of an alien assuming insurer:
      - (A) maintains a surplus with regard to policyholders in an amount not less than \$20,000,000; and
      - (B) submits to the authority of the commissioner to examine its books and records.
  - (b) The requirements of Subsections (5)(a)(i) and (ii) do not apply to reinsurance ceded and assumed pursuant to a pooling arrangement among insurers in the same holding company system.
- (6)
  - (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that maintains a trust fund:
    - (i) created in accordance with rules made by the commissioner; and
    - (ii) in a qualified United States financial institution for the payment of a valid claim of:
      - (A) a United States ceding insurer of the assuming insurer;
      - (B) an assign of the United States ceding insurer; and
      - (C) a successor in interest to the United States ceding insurer.
  - (b) To enable the commissioner to determine the sufficiency of the trust fund described in Subsection (6)(a), the assuming insurer shall:
    - (i) report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by a licensed insurer; and
    - (ii)
      - (A) submit to examination of its books and records by the commissioner; and
      - (B) pay the cost of an examination.
  - (c)
    - (i) Credit for reinsurance may not be granted under this Subsection (6) unless the form of the trust and any amendment to the trust is approved by:
      - (A) the commissioner of the state where the trust is domiciled; or
      - (B) the commissioner of another state who, pursuant to the terms of the trust instrument, accepts principal regulatory oversight of the trust.
    - (ii) The form of the trust and an amendment to the trust shall be filed with the commissioner of every state in which a ceding insurer beneficiary of the trust is domiciled.
    - (iii) The trust instrument shall provide that a contested claim is valid and enforceable upon the final order of a court of competent jurisdiction in the United States.
    - (iv) The trust shall vest legal title to its assets in its one or more trustees for the benefit of:
      - (A) a United States ceding insurer of the assuming insurer;
      - (B) an assign of the United States ceding insurer; or
      - (C) a successor in interest to the United States ceding insurer.

- (v) The trust and the assuming insurer are subject to examination as determined by the commissioner.
- (vi) The trust shall remain in effect for as long as the assuming insurer has an outstanding obligation due under a reinsurance agreement subject to the trust.
- (vii) No later than February 28 of each year, the trustee of the trust shall:
  - (A) report to the commissioner in writing the balance of the trust;
  - (B) list the trust's investments at the end of the preceding calendar year; and
  - (C)
    - (I) certify the date of termination of the trust, if so planned; or
    - (II) certify that the trust will not expire prior to the following December 31.
- (d) The following requirements apply to the following categories of assuming insurer:
  - (i) For a single assuming insurer:
    - (A) the trust fund shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers; and
    - (B) the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000, except as provided in Subsection (6)(d)(ii).
  - (ii)
    - (A) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development.
    - (B) The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency.
    - (C) The minimum required trustee surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.
  - (iii) For a group acting as assuming insurer, including incorporated and individual unincorporated underwriters:
    - (A) for reinsurance ceded under a reinsurance agreement with an inception, amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trustee account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by the one or more United States domiciled ceding insurers to an underwriter of the group;
    - (B) for reinsurance ceded under a reinsurance agreement with an inception date on or before July 31, 1995, and not amended or renewed after July 31, 1995, notwithstanding the other provisions of this chapter, the trust shall consist of a trustee account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States;
    - (C) in addition to a trust described in Subsection (6)(d)(iii)(A) or (B), the group shall maintain in trust a trustee surplus of which \$100,000,000 is held jointly for the benefit of the one or more United States domiciled ceding insurers of a member of the group for all years of account;
    - (D) the incorporated members of the group:

- (I) may not be engaged in a business other than underwriting as a member of the group;  
and
  - (II) are subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members; and
- (E) within 90 days after the day on which the group's financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner:
  - (I) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or
  - (II) if a certification is unavailable, a financial statement, prepared by an independent public accountant, of each underwriter member of the group.
- (iv) For a group of incorporated underwriters under common administration, the group shall:
  - (A) have continuously transacted an insurance business outside the United States for at least three years immediately preceding the day on which the group makes application for accreditation;
  - (B) maintain aggregate policyholders' surplus of at least \$10,000,000,000;
  - (C) maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by the one or more United States domiciled ceding insurers to a member of the group pursuant to a reinsurance contract issued in the name of the group;
  - (D) in addition to complying with the other provisions of this Subsection (6)(d)(iv), maintain a joint trusted surplus of which \$100,000,000 is held jointly for the benefit of the one or more United States domiciled ceding insurers of a member of the group as additional security for these liabilities; and
  - (E) within 90 days after the day on which the group's financial statements are due to be filed with the group's domiciliary regulator, make available to the commissioner:
    - (I) an annual certification of each underwriter member's solvency by the member's domiciliary regulator; and
    - (II) a financial statement of each underwriter member of the group prepared by an independent public accountant.
- (7) If reinsurance is ceded to an assuming insurer not meeting the requirements of Subsection (3), (4), (5), or (6), a domestic ceding insurer is allowed credit only as to the insurance of a risk located in a jurisdiction where the reinsurance is required by applicable law or regulation of that jurisdiction.
- (8) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that secures its obligations in accordance with this Subsection (8):
  - (a) The insurer shall be certified by the commissioner as a reinsurer in this state.
  - (b) To be eligible for certification, the assuming insurer shall:
    - (i) be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to Subsection (8)(d);
    - (ii) maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
    - (iii) maintain financial strength ratings from two or more rating agencies considered acceptable by the commissioner pursuant to rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
  - (iv) agree to:
    - (A) submit to the jurisdiction of this state;
    - (B) appoint the commissioner as its agent for service of process in this state;

- (C) provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment;
  - (D) agree to meet applicable information filing requirements as determined by the commissioner including an application for certification, a renewal and on an ongoing basis; and
  - (E) any other requirements for certification considered relevant by the commissioner.
- (c) An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. To be eligible for certification, in addition to satisfying requirements of Subsections (8)(a) and (b), the association:
- (i) shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members in an amount determined by the commissioner to provide adequate protection;
  - (ii) may not have incorporated members of the association engaged in any business other than underwriting as a member of the association;
  - (iii) shall be subject to the same level of regulation and solvency control of the incorporated members of the association by the association's domiciliary regulator as are the unincorporated members; and
  - (iv) within 90 days after its financial statements are due to be filed with the association's domiciliary regulator provide:
    - (A) to the commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or
    - (B) if a certification is unavailable, financial statements prepared by independent public accountants, of each underwriter member of the association.
- (d) The commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in the jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.
- (i) To determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner:
    - (A) shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis;
    - (B) shall consider the rights, the benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States;
    - (C) shall require the qualified jurisdiction to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction; and
    - (D) may not recognize a jurisdiction as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards.
  - (ii) The commissioner may consider additional factors in determining a qualified jurisdiction.
  - (iii) A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners' Committee Process and the commissioner shall:
    - (A) consider this list in determining qualified jurisdictions; and
    - (B) if the commissioner approves a jurisdiction as qualified that does not appear on the National Association of Insurance Commissioner's list of qualified jurisdictions, provide thoroughly documented justification in accordance with criteria to be developed by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

- (iv) United States jurisdictions that meet the requirement for accreditation under the National Association of Insurance Commissioners' financial standards and accreditation program shall be recognized as qualified jurisdictions.
- (v) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, in lieu of revocation.
- (e) The commissioner shall:
  - (i) assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies considered acceptable to the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
  - (ii) publish a list of all certified reinsurers and their ratings.
- (f) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this Subsection (8) at a level consistent with its rating, as specified in rules made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (i) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with Section 31A-17-404.1, or in a multibeneficiary trust in accordance with Subsections (5), (6), and (7), except as otherwise provided in this Subsection (8).
  - (ii) If a certified reinsurer maintains a trust to fully secure its obligations subject to Subsections (5), (6), and (7), and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this Subsection (8) or comparable laws of other United States jurisdictions and for its obligations subject to Subsections (5), (6), and (7).
  - (iii) It shall be a condition to the grant of certification under this Subsection (8) that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of the trust account, to fund, upon termination of the trust account, out of the remaining surplus of the trust, any deficiency of any other the trust account.
  - (iv) The minimum trusteed surplus requirements provided in Subsections (5), (6), and (7) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this Subsection (8), except that the trust shall maintain a minimum trusteed surplus of \$10,000,000.
  - (v) With respect to obligations incurred by a certified reinsurer under this Subsection (8), if the security is insufficient, the commissioner:
    - (A) shall reduce the allowable credit by an amount proportionate to the deficiency; and
    - (B) may impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.
  - (vi) For purposes of this Subsection (8), a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100% of its obligations.
    - (A) As used in this Subsection (8), the term "terminated" refers to revocation, suspension, voluntary surrender, and inactive status.
    - (B) If the commissioner continues to assign a higher rating as permitted by other provisions of this section, the requirement under this Subsection (8)(f)(vi) does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

- (g) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners' accredited jurisdiction, the commissioner may:
  - (i) defer to that jurisdiction's certification;
  - (ii) defer to the rating assigned by that jurisdiction; and
  - (iii) consider such reinsurer to be a certified reinsurer in this state.
- (h)
  - (i) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business.
  - (ii) An inactive certified reinsurer shall continue to comply with all applicable requirements of this Subsection (8).
  - (iii) The commissioner shall assign a rating to a reinsurer that qualifies under this Subsection (8)(h), that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.
- (9) Reinsurance credit may not be allowed a domestic ceding insurer unless the assuming insurer under the reinsurance contract submits to the jurisdiction of Utah courts by:
  - (a)
    - (i) being an admitted insurer; and
    - (ii) submitting to jurisdiction under Section 31A-2-309;
  - (b) having irrevocably appointed the commissioner as the domestic ceding insurer's agent for service of process in an action arising out of or in connection with the reinsurance, which appointment is made under Section 31A-2-309; or
  - (c) agreeing in the reinsurance contract:
    - (i) that if the assuming insurer fails to perform its obligations under the terms of the reinsurance contract, the assuming insurer, at the request of the ceding insurer, shall:
      - (A) submit to the jurisdiction of a court of competent jurisdiction in a state of the United States;
      - (B) comply with all requirements necessary to give the court jurisdiction; and
      - (C) abide by the final decision of the court or of an appellate court in the event of an appeal; and
    - (ii) to designate the commissioner or a specific attorney licensed to practice law in this state as its attorney upon whom may be served lawful process in an action, suit, or proceeding instituted by or on behalf of the ceding company.
- (10) Submitting to the jurisdiction of Utah courts under Subsection (9) does not override a duty or right of a party under the reinsurance contract, including a requirement that the parties arbitrate their disputes.
- (11) If an assuming insurer does not meet the requirements of Subsection (3), (4), or (5), the credit permitted by Subsection (6) or (8) may not be allowed unless the assuming insurer agrees in the trust instrument to the following conditions:
  - (a)
    - (i) Notwithstanding any other provision in the trust instrument, if an event described in Subsection (11)(a)(ii) occurs the trustee shall comply with:
      - (A) an order of the commissioner with regulatory oversight over the trust; or
      - (B) an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.
    - (ii) This Subsection (11)(a) applies if:
      - (A) the trust fund is inadequate because the trust contains an amount less than the amount required by Subsection (6)(d); or
      - (B) the grantor of the trust is:

- (I) declared insolvent; or
  - (II) placed into receivership, rehabilitation, liquidation, or similar proceeding under the laws of its state or country of domicile.
- (b) The assets of a trust fund described in Subsection (11)(a) shall be distributed by and a claim shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of a domestic insurance company.
- (c) If the commissioner with regulatory oversight determines that the assets of the trust fund, or any part of the assets, are not necessary to satisfy the claims of the one or more United States ceding insurers of the grantor of the trust, the assets, or a part of the assets, shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust instrument.
- (d) A grantor shall waive any right otherwise available to it under United States law that is inconsistent with this Subsection (11).
- (12) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification.
  - (a) The commissioner shall give the reinsurer notice and opportunity for hearing.
  - (b) The suspension or revocation may not take effect until after the commissioner's order after a hearing, unless:
    - (i) the reinsurer waives its right to hearing;
    - (ii) the commissioner's order is based on:
      - (A) regulatory action by the reinsurer's domiciliary jurisdiction; or
      - (B) the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or primary certifying state under Subsection (8)(g); or
    - (iii) the commissioner's finding that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.
  - (c) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with Section 31A-17-404.1.
  - (d) If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with Subsection (8)(f) or Section 31A-17-404.1.
- (13)
  - (a) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business.
  - (b)
    - (i) A domestic ceding insurer shall notify the commissioner within 30 days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers:
      - (A) exceeds 50% of the domestic ceding insurer's last reported surplus to policyholders; or
      - (B) after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed 50% of the domestic ceding insurer's last reported surplus to policyholders.
    - (ii) The notification required by Subsection (13)(b)(i) shall demonstrate that the exposure is safely managed by the domestic ceding insurer.



(c) A ceding insurer shall take steps to diversify its reinsurance program.

(d)

(i) A domestic ceding insurer shall notify the commissioner within 30 days after ceding or being likely to cede more than 20% of the ceding insurer's gross written premium in the prior calendar year to any:

(A) single assuming insurer; or

(B) group of affiliated assuming insurers.

(ii) The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

Amended by Chapter 138, 2016 General Session